

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

STATE OF DELAWARE,

Plaintiff,

v.

LAMAR WRIGHT-CLAYTON,

Defendant.

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Cr. ID. No. 1509013826

Submitted: July 12, 2018

Decided: October 23, 2018

**COMMISSIONER'S REPORT AND RECOMMENDATION THAT  
DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF  
SHOULD BE DENIED  
AND  
COUNSEL'S MOTION TO WITHDRAW SHOULD BE GRANTED.**

Phillip M. Casale, Esquire, Deputy Attorney General, Department of Justice,  
Wilmington, Delaware, Attorney for the State.

Natalie S. Woloshin, Esquire, 3200 Concord Pike, Wilmington, Delaware, 19803,  
Attorney for Defendant.

PARKER, Commissioner

This 23rd day of October, upon consideration of Defendant's Motion for Postconviction Relief, it appears to the Court that:

**BACKGROUND AND PROCEDURAL HISTORY**

1. On November 9, 2015, Defendant Lamar Wright-Clayton was indicted on charges of Possession of a Firearm by a Person Prohibited ("PFBPP"), Possession of Ammunition by a Person Prohibited ("PABPP"), Carrying a Concealed Deadly Weapon ("CCDW"), Endangering the Welfare of a Child, Driving While Suspended, and Operating a Motor Vehicle in an Unsafe Condition.
2. A motion to suppress was filed by defense counsel on Wright-Clayton's behalf<sup>1</sup>, and following a hearing on the motion, on March 21, 2016, the motion was denied.<sup>2</sup>
3. After the denial of the suppression motion, on March 22, 2016, the case proceeded to trial. The State entered a *nolle prosequi* on the Operating a Motor Vehicle in an Unsafe Condition charge and proceeded to jury trial on the remaining charges.
4. That same day, the jury rendered its verdict. Wright-Clayton was acquitted of Endangering the Welfare of a Child and found guilty of all the other charges.
5. Prior to sentencing the State moved to declare Wright-Clayton a habitual offender.<sup>3</sup> On June 3, 2016, following a pre-sentence investigation, Wright-Clayton was declared a habitual offender, pursuant to 11 *Del.C.* § 4214(a), as to the PFBPP and CCDW charges.
6. The Superior Court sentenced Wright-Clayton to a total unsuspended sentence of 23 years and 30 days at Level V incarceration followed by probation. Wright-Clayton was sentenced to 15 years at Level V, as a habitual offender, on the PFBPP conviction.

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<sup>1</sup> Superior Court Docket No. 9.

<sup>2</sup> Superior Court Docket Nos. 16 & 17.

<sup>3</sup> Superior Court Docket No. 27.

Defendant was sentenced to 8 years at Level V, as a habitual offender, on the CCDW conviction. On the PABPP conviction Defendant was sentenced to 5 years at Level V suspended for 18 months at Level III. On the driving while suspended/revoked, Defendant was sentenced to 30 days at Level V.

7. Wright-Clayton filed a direct appeal to the Delaware Supreme Court. In Wright-Clayton's direct appeal, he appealed the denial of his suppression motion. On January 20, 2017, the Delaware Supreme Court determined that the appeal was without merit, upheld the denial of his suppression motion, and affirmed the judgment of the Superior Court.<sup>4</sup>

### FACTS

8. On September 18, 2015 at about 7:05 p.m., a traffic stop was conducted near the intersection of 26<sup>th</sup> Street and Jessup in the City of Wilmington.<sup>5</sup> The police officers observed that the vehicle had a crack in the windshield and a missing bumper. The police officers pulled over the vehicle to take a closer look to determine whether the vehicle was in an unsafe condition.<sup>6</sup>

9. Wright-Clayton was the driver of the vehicle. At the time of the stop, Wright-Clayton admitted to the police that his license was suspended. He appeared to be extremely nervous. His breathing was elevated. He kept looking at his drive stick. The police ordered Wright-Clayton out of the vehicle since they were not going to allow him to drive the vehicle without a valid license.<sup>7</sup>

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<sup>4</sup> *Lamar Wright-Clayton v. State*, Del.Supr., No. 292,2016 (January 20, 2017).

<sup>5</sup> See, March 21, 2016 Transcript of Suppression Hearing, at pgs. 87-98.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

10. As Wright-Clayton stepped out of the vehicle, the police noticed that his right hand stayed pressed against his right pant pocket, and he positioned himself so that he was facing the officer with his left side so that the officer could not see his right side. It was very unusual. He was looking over his left shoulder as he was talking to the officer.<sup>8</sup>

11. The police conducted a pat-down search of Wright-Clayton and there was a loaded firearm found in this right pant pocket.<sup>9</sup>

12. Following the suppression hearing on March 21, 2016, the Superior Court held that the police had a reasonable and articulable suspicion to conduct the stop, to order Wright-Clayton out of the vehicle, and to conduct a pat-down search of his person based on their belief that there was a safety issue involved. The Superior Court denied Wright-Clayton's motion to suppress.<sup>10</sup>

13. The suppression issue was then raised on direct appeal, and the Delaware Supreme Court affirmed the decision of the Superior Court on the basis of and for the reasons stated by the Superior Court in its bench ruling at the suppression hearing.<sup>11</sup>

#### **RULE 61 MOTION AND COUNSEL'S MOTION TO WITHDRAW**

14. On April 10, 2017, Defendant filed a *pro se* motion for postconviction relief. Defendant was thereafter assigned counsel.

15. On June 13, 2018, assigned counsel filed a Motion to Withdraw as Postconviction Counsel pursuant to Superior Court Criminal Rule 61(e)(6).

16. Superior Court Criminal Rule 61(e)(6) provides that:

If counsel considers the movant's claim to be so lacking in merit that counsel cannot ethically advocate it, and counsel is

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Lamar Wright-Clayton v. State*, Del.Sup., No. 292,2016 (January 20, 2017).

not aware of any other substantial ground for relief available to the movant, counsel may move to withdraw. The motion shall explain the factual and legal basis for counsel's opinion and shall give notice that the movant may file a response to the motion within 30 days of service of the motion upon the movant.

17. In the motion to withdraw, Wright-Clayton's Rule 61 counsel represented that, after undertaking a thorough analysis of the Defendant's claims, counsel has determined that the claims are so lacking in merit that counsel cannot ethically advocate any of them.<sup>12</sup> Counsel further represented that, following a thorough review of the record, counsel was not aware of any other substantial claim for relief available to Wright-Clayton.<sup>13</sup> Defendant's Rule 61 counsel represented to the court that there are no potential meritorious grounds on which to base a Rule 61 motion and has therefore sought to withdraw as counsel.<sup>14</sup>

18. On July 5, 2018, Wright-Clayton opposed counsel's motion to withdraw and raised additional issues and supplemental points that he wanted the court to consider as part of his Rule 61 motion.<sup>15</sup> On July 12, 2018, Wright-Clayton supplemented his submission with additional points for consideration.<sup>16</sup>

19. In order to evaluate Wright-Clayton's Rule 61 motion and to determine whether his Rule 61 counsel's motion to withdraw should be granted, the court should be satisfied that Rule 61 counsel made a conscientious examination of the record and the law for claims that could arguable support Wright-Clayton's Rule 61 motion. In addition, the court should conduct its own review of the record in order to determine whether Wright-

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<sup>12</sup> See, Superior Court Docket Nos. 52 & 53- Defendant's Rule 61 counsel's Motion to Withdraw along with the accompanying Memorandum in Support of Motion to Withdraw.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Superior Court Docket No. 55.

<sup>16</sup> Superior Court Docket No. 56.

Clayton's Rule 61 motion is so totally devoid of any, at least, arguable postconviction claims.<sup>17</sup>

**DEFENDANT'S RULE 61 MOTION IS WITHOUT MERIT**

20. Wright-Clayton raised a number of ineffective assistance of counsel claims in his Rule 61 motion. Wright-Clayton claimed that: 1) his counsel failed to have all the charges dismissed; 2) his counsel was ineffective for failing to object to biased jurors; 3) his counsel failed to prepare for trial; 4) his counsel failed to file a motion for a reduction of sentence; and 5) his counsel failed to inform him of the time period for filing any such motion. In his supplemental submissions he also contended that: 1) his sentence was illegal; 2) he should be entitled to a judgment of acquittal; and 3) his sentence should otherwise be set aside and he should be immediately released.

21. In order to prevail on an ineffective assistance of counsel claim, Wright-Clayton must meet the two-pronged *Strickland* test by showing that: (1) counsel performed at a level "below an objective standard of reasonableness" and that, (2) the deficient performance prejudiced the defense.<sup>18</sup> The first prong requires the defendant to show by a preponderance of the evidence that defense counsel was not reasonably competent, while the second prong requires him to show that there is a reasonable probability that, but for defense counsel's unprofessional errors, the outcome of the proceedings would have been different.<sup>19</sup>

22. Mere allegations of ineffectiveness will not suffice; instead, a defendant must make and substantiate concrete allegations of actual prejudice.<sup>20</sup> Although not

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<sup>17</sup> *Matos v. State*, 2015 WL 5719694, \*2 (Del.).

<sup>18</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984).

<sup>19</sup> *Id.* at 687-88, 694.

<sup>20</sup> *Younger v. State*, 580 A.2d 552, 556 (Del. 1990).

insurmountable, the *Strickland* standard is highly demanding and leads to a strong presumption that counsel's conduct fell within a wide range of reasonable professional assistance.<sup>21</sup> Moreover, there is a strong presumption that defense counsel's conduct constituted sound trial strategy.<sup>22</sup>

23. In *Harrington v. Richter*,<sup>23</sup> the United States Supreme Court explained the high bar that must be surmounted in establishing an ineffective assistance of counsel claim. In *Harrington*, the United States Supreme Court explained that representation is constitutionally ineffective only if it so undermined the proper functioning of the adversarial process that the defendant was denied a fair trial.<sup>24</sup> Counsel's representation must be judged by the most deferential of standards.<sup>25</sup>

24. Turning to Wright-Clayton's claims, most of the claims raised by Wright-Clayton in his Rule 61 motion stem from the fact that the State decided not to proceed with the Operating a Motor Vehicle in an Unsafe Condition charge. The State dismissed this charge and proceeded to trial on all the other charges in the indictment. Wright-Clayton contends that after the State dismissed the traffic offense, he should not have been convicted of any of the other charges stemming from that traffic stop.

25. Because all the other charges in the indictment were not also dismissed, Wright-Clayton believes that his trial counsel, and thereafter his Rule 61 counsel were ineffective. He believes that his convictions of the other charges in the indictment were illegal, his sentences on those charges illegal, that his sentence should be reduced, that that he should be entitled to a judgment of acquittal, and that his trial counsel and Rule 61

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<sup>21</sup> *Albury v. State*, 551 A.2d 53, 59 (Del. 1988); *Salih v. State*, 2008 WL 4762323, at \*1 (Del. 2008).

<sup>22</sup> *Strickland v. Washington*, 466 U.S. 668, 689 (1984).

<sup>23</sup> *Harrington v. Richter*, 131 S.Ct. 770 (2011).

<sup>24</sup> *Id.* at \*791.

<sup>25</sup> *Id.* at \*787-88.

counsel otherwise failed him in not securing the overturning of his convictions and his immediate release.

26. It is important to understand that the facts at trial were simple and straightforward. Wright-Clayton, a person prohibited, was found in possession of a loaded gun during a traffic stop. His only possible defense was that the search incident to the traffic stop was not supported by reasonable suspicion and that the evidence seized, the loaded gun, should have been suppressed. Wright-Clayton's trial counsel filed a suppression motion raising this issue, a hearing was held, and the Superior Court denied the motion finding that there was reasonable suspicion to conduct the vehicle stop, order Wright-Clayton out of the vehicle, and conduct the search. The Delaware Supreme Court affirmed this decision of the Superior Court.

27. The Superior Court already held, and the Delaware Supreme Court already affirmed, that the police had a reasonable and articulable suspicion to effectuate the stop of the vehicle and to conduct the subsequent search.<sup>26</sup> This issue has already been fully adjudicated and is now procedurally barred as previously adjudicated.<sup>27</sup> The Delaware Supreme Court's decision affirming the Superior Court's denial of the suppression motion cannot again be challenged in this Rule 61 motion.

28. The fact that the State dismissed the traffic offense, Operating a Motor Vehicle in an Unsafe Condition, prior to trial did not negate the basis for the traffic stop. The State does not have to secure a conviction of the traffic offense before it can obtain a conviction of any of the other charges stemming from that traffic stop.

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<sup>26</sup> *Id.*

<sup>27</sup> Superior Court Criminal Rule 61(i)(4).



29. The standard of proof needed for a conviction of the traffic offense is different from the standard of proof needed to make a traffic stop. In the former, to obtain a conviction, the State must meet its burden to prove that the defendant committed the traffic offense beyond a reasonable doubt. The standard is lower in the latter instance, to make the traffic stop, the State must meet a lower burden to prove that the police had a reasonable articulable suspicion to effectuate a valid traffic stop. The Superior Court, and thereafter, the Delaware Supreme Court, have already held that the State met its burden to prove that the police had a reasonable articulable suspicion to effectuate a valid traffic stop, and the matter is now at an end.

30. The fact that the State decided not to proceed with the traffic offense does not delegitimize or negate the basis for the stop. Irrespective of whether or not the traffic stop resulted in a traffic charge, if there was reasonable suspicion to conduct the stop and to conduct the subsequent search of Defendant's person, there is no basis to dismiss the additional charges that emanated from that stop and search.

31. The State's dismissal of the traffic offense does not render Wright-Clayton's convictions of the other charges in the indictment illegal. He is not entitled to a judgment of acquittal, to a reduced sentence, or to otherwise be immediately released from prison. Neither his trial counsel nor his Rule 61 counsel can be deemed ineffective for not securing Wright-Clayton's immediate release from prison or for not securing the overturning of his convictions. Neither trial counsel nor Rule 61 counsel can be deemed ineffective for failing to file a meritless motion seeking the dismissal of charges when there was no basis in fact or law to do so.<sup>28</sup>

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<sup>28</sup> *State v. Exum*, 2002 WL 100576, at \*2 (Del.Super.), *affirmed*, 2002 WL 2017230, at \*1 (Del.).

32. In his Rule 61 motion, Wright-Clayton claims that his trial counsel was ineffective for failing to object to biased jurors. Wright-Clayton asserts that at least two jurors and one alternate juror have current or past family members working for or have worked in law enforcement.

33. The jurors identified by Wright-Clayton had reported having some familial connection to law enforcement during *voir dire*. The trial court then followed up with these jurors and confirmed that the connection would not have any impact on the jurors' ability to render an impartial decision in Mr. Wright-Clayton's trial.<sup>29</sup>

34. Trial counsel cannot be deemed ineffective for failing to strike a juror that was determined by the court to be impartial. Moreover, Wright-Clayton has not shown any prejudice. The jury's verdict was, of course, unanimous. This claim is without merit.

35. Wright-Clayton contends that his trial counsel was ineffective for failing to prepare for trial. Wright-Clayton raises a number of complaints. Wright-Clayton contends that his trial counsel should have had a defense, should have been more effective during cross-examination, should have raised issues Wright-Clayton thought were important, should have challenged the sufficiency of the evidence, should have challenged the admission of the evidence relating to the condition of the vehicle, and should not have advised him not to take the stand when he wanted to do so.

36. The evidence against Wright-Clayton was overwhelming. Defendant, a person prohibited, was found with a loaded firearm in his pocket during a traffic stop.<sup>30</sup> Trial counsel cannot create a defense out of whole cloth or create a scathing cross-examination

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<sup>29</sup> Superior Court Docket No. 53, Appendix to Motion to Withdraw as Counsel, at A057-A058; A064; A071-A072.

<sup>30</sup> See, March 21, 2016 Transcript of Suppression Hearing, at pg. 95.

without facts to work with. The only possible defense was that the search was not supported by reasonable suspicion and that the evidence seized (the gun) should have been suppressed. Wright-Clayton's trial counsel filed a suppression motion, a hearing was held, and the motion was denied. The stop and search were found to be lawful. The denial of the suppression motion was raised on direct appeal and was affirmed by the Delaware Supreme Court.

37. The decision as to whether or not to call a witness and how to examine and/or cross-examine witnesses who are called are tactical decisions.<sup>31</sup> Great weight and deference are given to tactical decisions by the trial attorney. There is a strong presumption that defense counsel's conduct constituted sound trial strategy.<sup>32</sup> Trial counsel was not deficient for not introducing issues during the trial that had little or no bearing on the arresting officer's perception at the time of the traffic stop and subsequent search and seizure. Nothing that defense counsel could have done would change the undisputed fact that Wright-Clayton, a person prohibited, was in possession of a loaded gun.

38. In his Rule 61 motion, Wright-Clayton claims that the firearm at issue belonged to his wife and that his wife put the gun in the console of the vehicle before he dropped her off at work. Wright-Clayton further contends that his wife directed him to remove the firearm from the console and return it to the safe at home. Even if trial counsel had this information prior to trial, which it appears he did not, it would not have changed the trial's outcome.

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<sup>31</sup> *Outten v. State*, 720 A.2d 547, 557 (Del. 1998).

<sup>32</sup> *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *Harrington v. Richter*, 131 S.Ct. 770 (2011).

39. Wright-Clayton's wife was not present at the traffic stop. At the time of the traffic stop, the loaded firearm was in Wright-Clayton's pocket, not the center console. Moreover, even assuming the firearm was in the center console, which it was not at the time of the stop, his wife's testimony would still have led to a conviction because it would have established his knowledge of the firearm and the intent to exercise control over it, which still constitutes possession of a firearm by a person prohibited.

40. Turning next to Wright-Clayton's claim that his trial counsel was ineffective in advising him not to testify, this claim is without merit. The Superior Court conducted a colloquy with Wright-Clayton, who confirmed that he understood his right not to testify and it was his decision not to testify.<sup>33</sup>

41. Trial counsel did a good job with what he had to work with. During his closing argument, trial counsel called into question the credibility of the police officers by pointing out that the State was not contending at trial that Wright-Clayton was driving an unsafe vehicle; despite the officers' claims for the initial stop.<sup>34</sup> Trial counsel also attempted to create reasonable doubt by arguing that there were no dash cameras, no DNA, and no fingerprints.<sup>35</sup> Despite the overwhelming and straightforward evidence presented in the State's case in chief, trial counsel still presented an effective argument for acquittal.<sup>36</sup> In fact, trial counsel was successful in obtaining an acquittal of the Endangering the Welfare of a Child charge.<sup>37</sup>

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<sup>33</sup> March 22, 2016 Trial Transcript, at pgs. 139-140.

<sup>34</sup> March 22, 2016 Trial Transcript, at pgs. 162-163.

<sup>35</sup> March 22, 2016 Trial Transcript, at pgs. 165-166.

<sup>36</sup> March 22, 2016 Trial Transcript, at pgs. 162-169.

<sup>37</sup> March 22, 2016 trial Transcript, at pg. 178.

42. Finally, there was no basis for a sentence modification or reduction. Wright-Clayton's sentence was not illegal. Trial counsel had no basis to file for a reduction of sentence.

43. The State filed a motion to have Wright-Clayton sentenced as a habitual offender, citing prior violent felonies. As a result, he was facing a minimum of 23 years of Level V time up to life imprisonment. At sentencing, trial counsel presented mitigating evidence, including a psycho-forensic report detailing Wright-Clayton's successful completion of a reentry program, consistent employment, and the importance of his presence in his family's life.<sup>38</sup>

44. Ultimately, the Court sentenced Wright-Clayton to 23 years and 30 days of Level V time- 15 years on the PFBPP, 8 years on the CCDW, 5 years on the PABPP suspended for 18 months at Level III, and 30 days on the driving with a suspended license.

45. Wright-Clayton has failed to establish that his trial counsel or Rule 61 counsel was deficient in any regard or that he suffered actual prejudice as a result thereof. Wright-Clayton's claims are without merit.

46. The court has reviewed the record carefully and has concluded that Wright-Clayton's Rule 61 motion is without merit and devoid of any other substantial claims for relief. The court is also satisfied that Defendant's Rule 61 counsel made a conscientious effort to examine the record and the law and has properly determined that Wright-Clayton does not have a meritorious claim to be raised in his Rule 61 motion.

47. Wright-Clayton's request for an evidentiary hearing is denied. Following a full, comprehensive and thorough review of the evidentiary record, Wright-Clayton's allegations were either reasonably discounted as not supported by the record or not

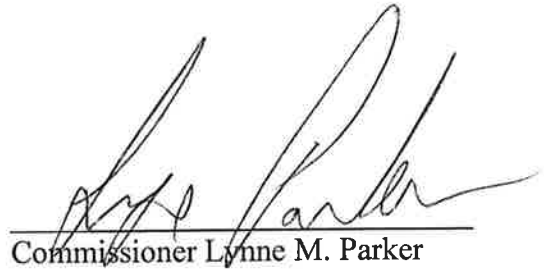
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<sup>38</sup> June 3, 2016 Sentencing Hearing, at pgs. 6-10.

material to a determination of Wright-Clayton's claims. It does not appear that an evidentiary hearing will aid in the resolution of this motion and is denied.

For all of the foregoing reasons, Defendant's Motion for Postconviction Relief should be denied and Defendant's Rule 61 counsel's motion to withdraw should be granted.

**IT IS SO RECOMMENDED.**



Commissioner Lynne M. Parker

cc: Prothonotary  
Andrew J. Meyer, Esquire  
Mr. Lamar Wright-Clayton (SBI# 00303456)